

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 08-2389

United States of America,

Appellee,

v.

Juan C. Polanco,

Appellant.

*
*
*
*
*
*
*
*
*
*

Appeal from the United States
District Court for the
District of Nebraska.

[UNPUBLISHED]

Submitted: December 18, 2009

Filed: January 14, 2010

Before MURPHY, COLLOTON, and SHEPHERD, Circuit Judges.

PER CURIAM.

Juan Polanco appeals the mandatory minimum sentence the district court¹ imposed after he pleaded guilty to distributing at least 50 grams of a methamphetamine mixture, in violation of 21 U.S.C. § 841(a)(1) and (b)(1) and 18 U.S.C. § 2. His counsel has moved to withdraw, and has filed a brief under Anders v. California, 386 U.S. 378 (1967), arguing that Polanco's sentence is unreasonable, and that the government should have filed a motion to reduce his sentence based on substantial assistance.

¹The Honorable Lyle E. Strom, United States District Judge for the District of Nebraska.

We find no merit in Polanco’s argument that the government should have filed a substantial-assistance motion. See United States v. Perez, 526 F.3d 1135, 1138 (8th Cir. 2008) (grounds on which district court may review government’s refusal to make substantial-assistance motion). Because the court lacked discretion to impose a sentence below the statutory minimum, we also find no merit in Polanco’s argument that the sentence is unreasonable. See United States v. Chacon, 330 F.3d 1065, 1066 (8th Cir. 2003) (only authority for court to depart below statutory minimum sentence is in 18 U.S.C. § 3553(e) and (f), which apply only when government makes motion for substantial assistance or when defendant qualifies under safety-valve provision); United States v. Gregg, 451 F.3d 930, 937 (8th Cir. 2006) (United States v. Booker, 543 U.S. 220 (2005), “does not relate to statutorily-imposed sentences”).

After reviewing the record independently under Penon v. Ohio, 488 U.S. 75 (1988), we find no non-frivolous issues. Accordingly, we affirm the district court’s judgment, and we grant counsel’s motion to withdraw, subject to counsel informing appellant about procedures for seeking rehearing and filing a petition for certiorari.